

Dear SEIU Local 221 Secretary Martha Rodriguez,

**We are writing you to file charges in accordance with the terms of the SEIU Constitution and Bylaws, Article XVII, Section 2(a), and in accordance with the terms of the SEIU Local 221 Constitution and Bylaws, Article XIV.**

Members of Local 221 who are employed by the County of San Diego concluded a ratification vote on February 26, 2011 regarding the employer's offer of contract extensions (with specific modifications). Five bargaining units voted to ratify and six bargaining units voted to reject the offer.

A County Contracts Bargaining Team was created during November of 2010.

Our charges are in regard to the conduct of SEIU Local 221 President Eric Banks during these two related events.

**President Banks did approve, authorize and allow the wording printed on the ratification ballot. The wording (with check boxes) was:**

**"SEIU Local 221 Tentative Agreement**

**"Yes - I vote to accept the contract extension.**

**"No - I vote to reject the contract extension and proceed to negotiations. I agree to participate in any actions necessary."**

California Government Code Section 3506 provides:

"Public agencies and *employee organizations* shall not interfere with, *intimidate*, restrain, *coerce* or discriminate against public employees because of their exercise of their rights under Section 3502." [emphasis added]

and California Government Code Section 3502 provides, in relevant part:

"Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

The extra wording added to the "No" vote choice, specifically "I agree to participate in any actions necessary" constitutes gross voter intimidation and coercion. Voters have the right to

  
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vote "no" without any conditions and without any expectation or pledge or oath to perform any other act.

One bargaining unit ratified the offer by only one vote. Another bargaining unit had a tie vote and will vote again on the question. For at least these two bargaining units the tainted wording of the ballot may have determined the outcome. For all bargaining units, the tainted wording caused the vote tallies to be an unreliable indication of the true will of the voting membership.

Ratification of the employer's offer will have an adverse effect on each employee's relationship with the employer. Ratification will mean a reduction in the take-home pay of each employee in a ratifying bargaining unit, by reduction in the amount of the retirement offset paid by the employer for each employee.

The actions of President Banks in approving the added wording on the "No" vote choice constitute an unfair labor practice, in violation of state law. The same actions also violate these subsections of the SEIU Constitution and Bylaws, Article XVII, Section 1 (and the parallel subsections of SEIU Local 221 Constitution and Bylaws, Article XIV):

"(2) Violation of an oath of office;"

The oath violated is:

"I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it."

**Members are wronged when they are coerced or intimidated into accepting a contract offer which includes a pay cut.**

"(3) Gross disloyalty or conduct unbecoming a member;"

The use of voter intimidation and coercion is conduct unbecoming of a member. The coercive manipulation of the ballot language to achieve a voting outcome more favorable to the employer than to the employee-member is gross disloyalty.

"(6) Engaging in corrupt or unethical practices or racketeering;"

Voter intimidation and coercion is not only corrupt and unethical. It is illegal.

**President Banks did approve, authorize and allow the creation of an unelected bargaining team. The scheduled election for bargaining team members on September 20-24, 2010 was cancelled. With at least twenty-seven seats to fill on the team, only a handful of candidates submitted valid nomination petitions. Those candidates were unopposed for their**

**respective bargaining unit seats on the team, and were deemed "elected". The remaining seats were then filled not by a rescheduled election, but by appointment.**

SEIU Local 221 Constitution and Bylaws Article IV, B.1. provides:

"Members shall have the right to vote on all Local Union matters that affect the collective bargaining relationship of their bargaining unit with the employer such as *the bargaining team*, contract proposals and contract ratification/rejection, and strikes." [emphasis added]

**The actions of President Banks in creating an unelected bargaining team** violate these subsections of the SEIU Constitution and Bylaws, Article XVII, Section 1 (and the parallel subsections of SEIU Local 221 Constitution and Bylaws, Article XIV):

"(1) Violation of any specific provision of this Constitution or of the Constitution and Bylaws of the Local Union;"

"(2) Violation of an oath of office;"

The oaths violated are:

"I pledge that I will faithfully observe the Constitution and Bylaws of the Service Employees International Union."

And

"I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it."

"(4) If an officer, gross inefficiency which might hinder and impair the interests of the International Union or the Local Union;"

An unelected bargaining team lacks any mandate and any accountability to the Local Union membership. By his gross inefficiency in not scheduling a new election for bargaining team members, President Banks has exposed the Local Union to unnecessary and greater risk of irresponsible and harmful decisions made by the bargaining team.

"(6) Engaging in corrupt or unethical practices or racketeering;"

Violating the right of members to vote to elect our bargaining team is a corruption of union democracy and an unethical abuse of power. Such conduct degrades the reputation of the Local Union and harms our interests.

**To remedy these violations, we ask:**

(1) that President Eric Banks be removed from office and expelled from the union;

(2) that the bargaining units which voted to ratify should have their vote done over again, without the offensive campaign language written into the ballot. The employer must be notified immediately that those bargaining unit votes are not finalized yet;

(3) that an election be held for bargaining team members for the County contract negotiations, no later than March 31, 2011.

Respectfully yours,

Jo Comer

Print name

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Signature

3-15-11

Date